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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,863	12/31/2001	Christopher P. Olson	KCC 4757 (K.C.No. 16,831	6380

321 7590 08/13/2003

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/038,863

Applicant(s)

OLSON ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-5. 6) ☐ Other: .

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- Reference character "8" as shown in figure 7
- Reference character "79" as shown in figure 8

A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12 – 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "said preselected amount of liquid " in lines 5 – 6. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 5 and 7 – 17, 19 – 20 and 22 – 23 are rejected under 35 U.S.C. 102(a) as being anticipated by Weber et al. (US 6,221,460).

With reference to claim 1, Weber et al. (hereinafter “Weber”) disclose a wetness indicator comprising a liquid permeable enclosure (40) having a liquid absorbent body (50) absorbing liquid in the presence thereof and applying hydraulic pressure to the enclosure upon absorption of a preselected amount of liquid, said enclosure limiting expansion of the absorbent body so that the wetness indicator stiffens as liquid is absorbed, said wetness indicator having a first stiffness when dry and a second stiffness greater than said first stiffness upon absorption of said preselected amount of liquid as set forth in col. 7, lines 16 – 23.

Weber states that the dimensional change member comprises a superabsorbent material that absorbs at least 4 times its own weight. The topsheet (40) limits expansion of the absorbent body through its direct bonding to the underlying layer (figures 6a – 6e) and the absorbent body has a second stiffness upon absorption of the

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preselected amount of liquid that is greater than the first stiffness when dry as known as an inherent property of superabsorbent material.

With reference to claim 2, Weber discloses a generally elongate wetness indicator as shown in figures 4 – 5.

As to claim 3, Weber discloses an absorbent body comprising a sheet laid over itself at least once to form two folds as set forth in figure 6e.

With respect to claim 4, Weber discloses an absorbent body formed from thin sheet material fan folded longitudinally multiple times to form a multifold structure as set forth in figure 6a.

Regarding claim 5, Weber discloses a wetness indicator that is generally rounded upon absorption of said preselected amount of liquid as set forth in figures 2 – 3.

With reference to claims 7 and 8, Weber discloses an enclosure having at least two generally elongate and parallel chambers as set forth in figure 4.

As to claim 9, Weber discloses a wetness indicator wherein the enclosure comprises a liquid permeable lining (50) and a base layer (49) attached to the lining to from the chambers between the base layer and the liner as set forth in figure 4.

Regarding claim 10, Weber discloses a wetness indicator wherein the base layer (49) is bonded to the lining (50) along a series of parallel, spaced apart seams (42) as set forth in figure 4.

As to claim 11, Weber discloses the wetness indicator being used in combination with a garment and being positioned in a crotch region of the garment as set forth in figure 1.

With reference to claim 12, Weber discloses a garment with an inner surface facing a wearer when wearing the garment (40), and a wetness indicator positioned relative to the inner surface (50), said wetness indicator having a first stiffness when dry and a second stiffness greater than said first stiffness upon absorption of a preselected amount of liquid as set forth in the rejection of claim 1.

With respect to claim 13, Weber discloses a garment wherein the wetness indicator is positioned in the garment to press on the inner thighs of the wearer as set forth in figure 1. The examiner contends that any device present in the crotch portion of a training pant, diaper, etc. will press on the inner thigh, among other areas, of the wearer due to the construction of the article.

As to claim 14, Weber discloses the garment as toilet training pants as set forth in col. 1, lines 14 – 18.

Regarding claim 15, Weber discloses a generally elongate wetness indicator in figure 4.

With reference to claims 16 – 17 and 22 – 23, Weber discloses the second stiffness as at least about five times greater than the first stiffness as set forth in col. 7, lines 21 – 23.

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With respect to claim 19, Weber discloses a garment wherein the wetness indicator comprises a liquid permeable enclosure (40) having a liquid absorbent body (50) therein as set forth in figure 4.

As to claim 20, Weber discloses the garment wherein the enclosure has at least two generally elongate and parallel chambers as set forth in figure 4.

Claims 1 – 2, 11 – 19 and 21 – 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Glaug et al. (US 5,797,892).

With reference to claim 1, Glaug et al. (hereinafter "Glaug") disclose a wetness indicator for alerting a wearer to urination comprising a liquid permeable enclosure (52) having a liquid absorbent body (82) absorbing liquid in the presence thereof and applying hydraulic pressure to the enclosure upon absorption of a preselected amount of liquid, said enclosure limiting expansion of the absorbent body so that the wetness indicator stiffens as liquid is absorbed, said wetness indicator having a first stiffness when dry and a second stiffness greater than said first stiffness upon absorption of said preselected amount of liquid as set forth in col.15, line 40 to col. 16, line 41.

Glaug states that the dimensional change member is made of a compressed cellulose sponge (absorbent material) that expands to at least 2 times its dry dimension when exposed to an aqueous solution (hydraulic pressure). The topsheet (52) limits expansion of the absorbent body through its direct bonding to the support layer (col. 5, lines 34 – 38) and the absorbent body has a second stiffness upon absorption of the preselected amount of liquid that is greater than the first stiffness when dry as specifically taught in col. 16, lines 34 – 37.

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As to claim 2, Glaug discloses a wetness indicator that is generally elongate as set forth in figure 6.

Regarding claim 11, Glaug discloses a wetness indicator in combination with a garment (20), said wetness indicator being positioned in a crotch region of the garment as set forth in figure 1.

With reference to claim 12, Glaug discloses a garment with an inner surface facing a wearer when wearing the garment (52), and a wetness indicator positioned relative to the inner surface for alerting a wearer when the inner surface has become wet with liquid (82), said wetness indicator having a first stiffness when dry and a second stiffness greater than said first stiffness upon absorption of a preselected amount of liquid as set forth in col. 15, line 40 to col. 16, line 41.

With respect to claim 13, Glaug discloses a garment wherein the wetness indicator is positioned in the garment to press on the inner thighs of the wearer as set forth in figure 1.

As to claim 14, Glaug discloses the garment as toilet training pants as set forth in col. 4, lines 37 – 44.

Regarding claim 15, Glaug discloses a generally elongate wetness indicator in figures 1 and 6.

With reference to claims 16 – 18 and 22 – 24, Glaug discloses the second stiffness as at least about five times, or about ten times greater than the first stiffness as set forth in col. 15, lines 45 – 52.



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With respect to claim 19, Glaug discloses a garment wherein the wetness indicator comprises a liquid permeable enclosure (52) having a liquid absorbent body (82) therein as set forth in figure 6.

As to claim 21, Glaug discloses a garment wherein an unrestrained saturated volume of the liquid absorbent body is greater than the volume of the liquid permeable enclosure as set forth in col. 8, lines 19 – 35; col. 16, lines 28 – 30 and lines 56 – 59.

Glaug discloses that the liquid absorbent body may comprise expandable foams and compressed cellulose sponges while the liquid permeable enclosure may be a tissue paper. The tissue paper, while permeable, will not significantly absorb any fluids. However, the cellulose or expandable foam, will absorb and retain the fluids that it is exposed to thereby allowing the volume of liquid absorbent body to be greater than the volume of the permeable enclosure.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weber et al. (US 6,221,460).

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The difference between Weber and claim 6 is the provision that the wetness indicator has a width between about one-fourth its length and three-fourth its length.

Weber teaches a wetness indicator having a width of 3½ inches (col. 12, lines 50 – 52) and a length that may be varied.

It would have been obvious to one of ordinary skill in the art to modify the length of the wetness indicator in order to provide the desired crush resistance and ventilation as taught by Weber in col. 7, lines 24 – 35. Likewise, since the general conditions of the claim are disclosed in the prior art, discovering the optimum or workable range requires only a level of ordinary skill in the art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the prior art is cited to show the state of the art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Michele Kidwell*  
Michele Kidwell  
August 10, 2003

  
**KIM M. LEWIS**  
**PRIMARY EXAMINER**  
*AU 3761*